

Page 1 of 2

**EXECUTIVE SUMMARY - ENFORCEMENT MATTER**  
**DOCKET NO.: 2008-0900-PWS-E TCEQ ID: RN102688520 CASE NO.: 35984**  
**RESPONDENT NAME: Deep Water Holdings, Inc.**

<b>ORDER TYPE:</b>		
<input checked="" type="checkbox"/> 1660 AGREED ORDER	<input type="checkbox"/> FINDINGS AGREED ORDER	<input type="checkbox"/> FINDINGS ORDER FOLLOWING SOAH HEARING
<input type="checkbox"/> FINDINGS DEFAULT ORDER	<input type="checkbox"/> SHUTDOWN ORDER	<input type="checkbox"/> IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER
<input type="checkbox"/> AMENDED ORDER	<input type="checkbox"/> EMERGENCY ORDER	
<b>CASE TYPE:</b>		
<input type="checkbox"/> AIR	<input type="checkbox"/> MULTI-MEDIA (check all that apply)	<input type="checkbox"/> INDUSTRIAL AND HAZARDOUS WASTE
<input checked="" type="checkbox"/> PUBLIC WATER SUPPLY	<input type="checkbox"/> PETROLEUM STORAGE TANKS	<input type="checkbox"/> OCCUPATIONAL CERTIFICATION
<input type="checkbox"/> WATER QUALITY	<input type="checkbox"/> SEWAGE SLUDGE	<input type="checkbox"/> UNDERGROUND INJECTION CONTROL
<input type="checkbox"/> MUNICIPAL SOLID WASTE	<input type="checkbox"/> RADIOACTIVE WASTE	<input type="checkbox"/> DRY CLEANER REGISTRATION
<p><b>SITE WHERE VIOLATION(S) OCCURRED:</b> Big Creek Park 8, 225 Avenue H, Somerville, Burleson County</p> <p><b>TYPE OF OPERATION:</b> Public water supply</p> <p><b>SMALL BUSINESS:</b> <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p><b>OTHER SIGNIFICANT MATTERS:</b> There are no complaints. There is no record of additional pending enforcement actions regarding this facility location.</p> <p><b>INTERESTED PARTIES:</b> No one other than the ED and the Respondent has expressed an interest in this matter.</p> <p><b>COMMENTS RECEIVED:</b> The <i>Texas Register</i> comment period expired on September 15, 2008. No comments were received.</p> <p><b>CONTACTS AND MAILING LIST:</b> TCEQ Attorney/SEP Coordinator: None TCEQ Enforcement Coordinator: Mr. Christopher Keffer, Enforcement Division, Enforcement Team 2, MC 169, (512) 239-5610; Mr. Bryan Sinclair, Enforcement Division, MC 219, (512) 239-2171 Respondent: Mr. David Hickson, Registered Agent, Deep Water Holdings, Inc., P.O. Box 418, Lyons, Texas 77863-0418 Mr. Bart White, Vice President, Deep Water Holdings, Inc., P.O. Box 418, Lyons, Texas 77863-0418 Respondent's Attorney: Not represented by counsel on this enforcement matter</p>		

TEXAS  
COMMISSION  
ON ENVIRONMENTAL  
QUALITY  
708 SEP 22 11:11:55  
CHIEF CLEMENS OFFICE

**VIOLATION SUMMARY CHART:**

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p><b>Type of Investigation:</b> <input type="checkbox"/> Complaint <input type="checkbox"/> Routine <input type="checkbox"/> Enforcement Follow-up <input checked="" type="checkbox"/> Records Review</p> <p><b>Date(s) of Complaints Relating to this Case:</b> None</p> <p><b>Date of Investigation Relating to this Case:</b> March 12, 2008</p> <p><b>Date of NOV/NOE Relating to this Case:</b> April 28, 2008 (NOE)</p> <p><b>Background Facts:</b> This was a record review.</p> <p><b>WATER</b></p> <p>1) Failure to meet minimum well capacity requirement of 1.0 gallon per minute ("gpm") per unit [30 TEX. ADMIN. CODE § 290.45(c)(1)(A)(i) and TEX. HEALTH &amp; SAFETY CODE § 341.0315(c)].</p> <p>2) Failure to provide the public water system's operating records for review [30 TEX. ADMIN CODE § 290.46(f)(2)].</p> <p>3) Failure to provide a properly constructed intruder-resistant fence in order to protect the system's facilities [30 TEX. ADMIN. CODE §§ 290.43(e) and 290.41(c)(3)(O)].</p>	<p><b>Total Assessed:</b> \$262</p> <p><b>Total Deferred:</b> \$52 <input checked="" type="checkbox"/> Expedited Settlement <input type="checkbox"/> Financial Inability to Pay</p> <p><b>SEP Conditional Offset:</b> \$0</p> <p><b>Total Paid to General Revenue:</b> \$210</p> <p><b>Site Compliance History Classification</b> <input type="checkbox"/> High <input type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p><b>Person Compliance History Classification</b> <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p><b>Major Source:</b> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p><b>Applicable Penalty Policy:</b> September 2002</p>	<p><b>Ordering Provisions:</b></p> <p>The Order will require the Respondent to:</p> <p>a. Within 90 days after the effective date of this Agreed Order:</p> <p>i. Obtain and begin maintaining water system records, including but not limited to, tank inspection records, well drillers log, and cementing certificate; and</p> <p>ii. Provide a properly constructed intruder-resistant fence for the well and pressure tank that includes three strands of barbed wire extending outward from the top of the fence at a 45 degree angle.</p> <p>b. Within 105 days after the effective date of this Agreed Order, submit written certification and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision a.</p> <p>c. Within 180 days after the effective date of this Agreed Order, provide a well capacity of 1.0 gpm per unit at the Facility.</p> <p>d. Within 195 days after the effective date of this Agreed Order, submit written certification and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision c.</p>

Additional ID No(s): PWS 0260030



Policy Revision 2 (September 2002)

## Penalty Calculation Worksheet (PCW)

PCW Revision April 29, 2008

TCEQ

DATES

Assigned 28-Apr-2008

PCW 20-May-2008

Screening 28-May-2008

EPA Due

## RESPONDENT/FACILITY INFORMATION

Respondent Deep Water Holdings, Inc.  
 Reg. Ent. Ref. No. RN102688520  
 Facility/Site Region 9-Waco Major/Minor Source Minor

## CASE INFORMATION

Enf./Case ID No. 35984 No. of Violations 3  
 Docket No. 2008-0900-PWS-E Order Type 1660  
 Media Program(s) Public Water Supply Enf. Coordinator Christopher Keffer  
 Multi-Media EC's Team Enforcement Team 2  
 Admin. Penalty \$ Limit Minimum \$50 Maximum \$1,000

## Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties)

Subtotal 1 \$250

## ADJUSTMENTS (+/-) TO SUBTOTAL 1

Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage.

Compliance History 5.0% Enhancement Subtotals 2, 3, &amp; 7 \$12

Notes Enhancement due to one NOV with the same or similar violations as those in the current enforcement action.

Culpability No 0.0% Enhancement Subtotal 4 \$0

Notes The Respondent does not meet the culpability criteria.

Good Faith Effort to Comply 0.0% Reduction Subtotal 5 \$0

Before NOV NOV to EDPRP/Settlement Offer  
 Extraordinary  
 Ordinary  
 N/A X (mark with x)

Notes The Respondent does not meet the good faith criteria.

Total EB Amounts \$69 0.0% Enhancement\* Subtotal 6 \$0  
 Approx. Cost of Compliance \$1,300 \*Capped at the Total EB \$ Amount

## SUM OF SUBTOTALS 1-7

Final Subtotal \$262

## OTHER FACTORS AS JUSTICE MAY REQUIRE

0.0%

Adjustment \$0

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes

Final Penalty Amount \$262

## STATUTORY LIMIT ADJUSTMENT

Final Assessed Penalty \$262

## DEFERRAL

20.0%

Reduction

Adjustment -\$52

Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes

Deferral offered for expedited settlement.

## PAYABLE PENALTY

\$210

Screening Date 28-May-2008

Docket No. 2008-0900-PWS-E

PCW

Respondent Deep Water Holdings, Inc.

Policy Revision 2 (September 2002)

Case ID No. 35984

PCW Revision April 29, 2008

Reg. Ent. Reference No. RN102688520

Media [Statute] Public Water Supply

Enf. Coordinator Christopher Keffer

## Compliance History Worksheet

## &gt;&gt; Compliance History Site Enhancement (Subtotal 2)

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written NOV's with same or similar violations as those in the current enforcement action (number of NOV's meeting criteria)	1	5%
	Other written NOV's	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability (number of orders meeting criteria)	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (number of judgements or consent decrees meeting criteria)	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government (number of counts)	0	0%
Emissions	Chronic excessive emissions events (number of events)	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which notices were submitted)	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which violations were disclosed)	0	0%
Please Enter Yes or No			
Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2) 5%

## &gt;&gt; Repeat Violator (Subtotal 3)

N/A

Adjustment Percentage (Subtotal 3) 0%

## &gt;&gt; Compliance History Person Classification (Subtotal 7)

Average Performer

Adjustment Percentage (Subtotal 7) 0%

## &gt;&gt; Compliance History Summary

Compliance  
History  
Notes

Enhancement due to one NOV with the same or similar violations as those in the current enforcement action.

Total Adjustment Percentage (Subtotals 2, 3, &amp; 7) 5%

<b>Screening Date</b>	28-May-2008	<b>Docket No.</b>	2008-0900-PWS-E	<b>PCW</b>
<b>Respondent</b>	Deep Water Holdings, Inc.	<i>Policy Revision 2 (September 2002)</i>		
<b>Case ID No.</b>	35984	<i>PCW Revision April 29, 2008</i>		
<b>Reg. Ent. Reference No.</b>	RN102688520			
<b>Media [Statute]</b>	Public Water Supply			
<b>Enf. Coordinator</b>	Christopher Keffer			
<b>Violation Number</b>	<input type="text" value="1"/>			
<b>Rule Cite(s)</b>	30 Tex. Admin. Code § 290.45(c)(1)(A)(i) and Tex. Health & Safety Code § 341.0315(c)			
<b>Violation Description</b>	Failed to meet minimum well capacity requirement of 1.0 gallon per minute ("gpm") per unit. Specifically, at the time of the record review, the well produced 47 gpm; however, the system requires 58 gpm, which is a 19% deficiency.			
<b>Base Penalty</b>	<input type="text" value="\$1,000"/>			

## &gt;&gt; Environmental, Property and Human Health Matrix

OR

	Harm		
Release	Major	Moderate	Minor
Actual	<input type="text"/>	<input type="text"/>	<input type="text"/>
Potential	<input type="text"/>	x	<input type="text"/>

Percent 

## &gt;&gt;Programmatic Matrix

	Falsification	Major	Moderate	Minor
	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>

Percent 

Matrix Notes

Failure to provide adequate well capacity may result in loss of pressure and water outages potentially exposing customers of the water supply to a significant amount of contaminants which would not exceed levels protective of human health.

Adjustment 

## Violation Events

Number of Violation Events  Number of violation days

mark only one with an x	daily	<input type="text"/>
	monthly	<input type="text"/>
	quarterly	x
	semiannual	<input type="text"/>
	annual	<input type="text"/>
	single event	<input type="text"/>

Violation Base Penalty 

One quarterly event is recommended, calculated from the date of the record review, March 12, 2008, to the date of screening, May 28, 2008.

## Economic Benefit (EB) for this violation

## Statutory Limit Test

Estimated EB Amount Violation Final Penalty Total This violation Final Assessed Penalty (adjusted for limits)

## Economic Benefit Worksheet

**Respondent** Deep Water Holdings, Inc.  
**Case ID No.** 35984  
**Reg. Ent. Reference No.** RN102688520  
**Media** Public Water Supply  
**Violation No.** 1

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
No commas or \$							

### Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction	\$500	12-Mar-2008	31-May-2009	1.22	\$2	\$41	\$43
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

The delayed cost includes the amount to meet the well capacity of 1.0 gpm per connection, calculated from the date of the record review to the estimated date of compliance.

### Avoided Costs

**ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)**

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$500

**TOTAL**

\$43

<b>Screening Date</b>	28-May-2008	<b>Docket No.</b>	2008-0900-PWS-E	<b>PCW</b>
<b>Respondent</b>	Deep Water Holdings, Inc.			<i>Policy Revision 2 (September 2002)</i>
<b>Case ID No.</b>	35984			<i>PCW Revision April 29, 2008</i>
<b>Reg. Ent. Reference No.</b>	RN102688520			
<b>Media [Statute]</b>	Public Water Supply			
<b>Enf. Coordinator</b>	Christopher Keffer			
<b>Violation Number</b>	<input type="text" value="2"/>			
<b>Rule Cite(s)</b>	<input type="text" value="30 Tex. Admin Code § 290.46(f)(2)"/>			
<b>Violation Description</b>	<input type="text" value="Failed to provide the public water system's operating records for review. Specifically, it was documented that the Respondent failed to provide the well drillers log, cementing certificate, and internal tank inspection form for the pressure tank."/>			
<b>Base Penalty</b>	<input type="text" value="\$1,000"/>			

## &gt;&gt; Environmental, Property and Human Health Matrix

OR

	Harm		
Release	Major	Moderate	Minor
Actual	<input type="text"/>	<input type="text"/>	<input type="text"/>
Potential	<input type="text"/>	<input type="text"/>	<input type="text"/>

Percent 

## &gt;&gt; Programmatic Matrix

	Falsification	Major	Moderate	Minor
	<input type="text"/>	<input type="text"/>	<input checked="" type="text" value="x"/>	<input type="text"/>

Percent 

Matrix Notes

Approximately 30% of the rule requirement was not met.

Adjustment 

## Violation Events

Number of Violation Events  Number of violation daysmark only one  
with an x

daily	<input type="text"/>
monthly	<input type="text"/>
quarterly	<input type="text"/>
semiannual	<input type="text"/>
annual	<input type="text"/>
single event	<input checked="" type="text" value="x"/>

Violation Base Penalty 

One single event is recommended.

## Economic Benefit (EB) for this violation

## Statutory Limit Test

Estimated EB Amount Violation Final Penalty Total This violation Final Assessed Penalty (adjusted for limits)

## Economic Benefit Worksheet

**Respondent** Deep Water Holdings, Inc.  
**Case ID No.** 35984  
**Reg. Ent. Reference No.** RN102688520  
**Media** Public Water Supply  
**Violation No.** 2

<b>Percent Interest</b>	<b>Years of Depreciation</b>
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
No commas or \$							
<b>Delayed Costs</b>							
Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System	\$200	12-Mar-2008	28-Feb-2009	0.97	\$10	n/a	\$10
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

The delayed costs include the amount to implement a record keeping system, calculated from the date of the record review to the estimated date of compliance.

<b>Avoided Costs</b>							
ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)							
Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance \$200TOTAL \$10



Screening Date 28-May-2008

Docket No. 2008-0900-PWS-E

PCW

Respondent Deep Water Holdings, Inc.

Policy Revision 2 (September 2002)

Case ID No. 35984

PCW Revision April 29, 2008

Reg. Ent. Reference No. RN102688520

Media [Statute] Public Water Supply

Enf. Coordinator Christopher Keffer

Violation Number 3

Rule Cite(s)

30 Tex. Admin. Code §§ 290.43(e) and 290.41(c)(3)(O)

Violation Description

Failed to provide a properly constructed intruder-resistant fence in order to protect the system's facilities. Specifically, at the time of the record review, it was documented that the fence was not equipped with three strands of barbed wire extending outward from the top of the fence.

Base Penalty \$1,000

## &gt;&gt; Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential		x	

Percent 10%

## &gt;&gt; Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0%

Matrix Notes

Failure to provide a proper intruder-resistant fence for the facilities may allow unauthorized persons to enter and damage or vandalize the system which may compromise the system's ability to provide a safe and adequate water supply and could expose customers to a significant amount of pollutants which would not exceed levels protective of human health.

Adjustment \$900

\$100

## Violation Events

Number of Violation Events 1

69 Number of violation days

mark only one  
with an x

daily	
monthly	
quarterly	x
semiannual	
annual	
single event	

Violation Base Penalty \$100

One quarterly event is recommended, calculated from the date of the record review, March 12, 2008, to the date of screening May 28, 2008.

## Economic Benefit (EB) for this violation

## Statutory Limit Test

Estimated EB Amount \$16

Violation Final Penalty Total \$105

This violation Final Assessed Penalty (adjusted for limits) \$105

## Economic Benefit Worksheet

**Respondent** Deep Water Holdings, Inc.  
**Case ID No.** 35984  
**Reg. Ent. Reference No.** RN102688520  
**Media** Public Water Supply  
**Violation No.** 3

<b>Percent Interest</b>	<b>Years of Depreciation</b>
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
No commas or \$							
<b>Delayed Costs</b>							
Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)	\$600	12-Mar-2008	1-Aug-2008	0.39	\$1	\$16	\$16
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

The delayed costs include the amount to equip the fence around the well and pressure tank with three strands of barbed wire, calculated from the date of the record review to the estimated date of compliance.

<b>Avoided Costs</b>							
ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)							
Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$600

TOTAL

\$16

# Compliance History

Customer/Respondent/Owner-Operator:	CN601364664	Deep Water Holdings, Inc.	Classification: AVERAGE	Rating: 2.00
Regulated Entity:	RN102688520	BIG CREEK PARK 8	Classification:	Site Rating:
ID Number(s):	PUBLIC WATER SYSTEM/SUPPLY	REGISTRATION	0260030	
	WATER LICENSING	LICENSE	0260030	
Location:	225 AVENUE H, SOMERVILLE, BURLESON COUNTY, TX 77879			
TCEQ Region:	REGION 09 - WACO			
Date Compliance History Prepared:	May 13, 2008			
Agency Decision Requiring Compliance History:	Enforcement			
Compliance Period:	May 13, 2003 to May 13, 2008			
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History				
Name:	Christopher Keffer	Phone:	(512) 239-5610	

## Site Compliance History Components

1. Has the site been in existence and/or operation for the full five year compliance period? Yes
2. Has there been a (known) change in ownership of the site during the compliance period? No
3. If Yes, who is the current owner? N/A
4. If Yes, who was/were the prior owner(s)? N/A
5. When did the change(s) in ownership occur? N/A

## Components (Multimedia) for the Site :

- A. Final Enforcement Orders, court judgements, and consent decrees of the state of Texas and the federal government.  
N/A
- B. Any criminal convictions of the state of Texas and the federal government.  
N/A
- C. Chronic excessive emissions events.  
N/A
- D. The approval dates of investigations. (CCEDS Inv. Track. No.)
  - 1 09/30/2005 (401948)
  - 2 02/25/2008 (618694)
  - 3 04/25/2008 (638951)
- E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)
 

Date:	08/05/2005	(401948)	
Self Report?	NO		Classification: Minor
Citation:	30 TAC Chapter 290, SubChapter D 290.45(c)(1)(A)(i)		
Description:	Failure to provide adequate well capacity.		
Self Report?	NO		Classification: Moderate
Citation:	30 TAC Chapter 290, SubChapter D 290.41(c)(3)(O)		
	30 TAC Chapter 290, SubChapter D 290.43(e)		
Description:	Failure to provide an intruder-resistant fence in order to protect the well and pressure tank.		
Self Report?	NO		Classification: Minor
Citation:	30 TAC Chapter 290, SubChapter D 290.46(f)(2)		
Description:	Failure to provide water system records that needed to be reviewed at the time of the investigation.		
- F. Environmental audits.  
N/A
- G. Type of environmental management systems (EMSs).  
N/A
- H. Voluntary on-site compliance assessment dates.

N/A

I. Participation in a voluntary pollution reduction program.

N/A

J. Early compliance.

N/A

Sites Outside of Texas

N/A

# TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



TEXAS  
COMMISSION  
ON ENVIRONMENTAL  
QUALITY

2008 SEP 22 11:11:46  
CHIEF OF ENFORCEMENT

IN THE MATTER OF AN  
ENFORCEMENT ACTION  
CONCERNING  
DEEP WATER HOLDINGS, INC.  
RN102688520

§  
§  
§  
§  
§

BEFORE THE  
TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY

## AGREED ORDER DOCKET NO. 2008-0900-PWS-E

### I. JURISDICTION AND STIPULATIONS

At its \_\_\_\_\_ agenda, the Texas Commission on Environmental Quality ("the Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding Deep Water Holdings, Inc. ("the Respondent") under the authority of TEX. HEALTH & SAFETY CODE ch. 341. The Executive Director of the TCEQ, through the Enforcement Division, and the Respondent appear before the Commission and together stipulate that:

1. The Respondent owns and operates a public water supply at 225 Avenue H, in Somerville, Burleson County, Texas (the "Facility") that has approximately 58 service connections and serves at least 25 people per day for at least 60 days per year.
2. The Commission and the Respondent agree that the Commission has jurisdiction to enter this Agreed Order, and that the Respondent is subject to the Commission's jurisdiction.
3. The Respondent received notice of the violations alleged in Section II ("Allegations") on or about May 3, 2008.
4. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by the Respondent of any violation alleged in Section II ("Allegations"), nor of any statute or rule.
5. An administrative penalty in the amount of Two Hundred Sixty-Two Dollars (\$262) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The Respondent has paid Two Hundred Ten Dollars (\$210) of the administrative penalty and Fifty-Two Dollars (\$52) is deferred contingent upon the Respondent's timely and satisfactory compliance with all the terms of this Agreed Order. The deferred amount will be waived upon



full compliance with the terms of this Agreed Order. If the Respondent fails to timely and satisfactorily comply with all requirements of this Agreed Order, the Executive Director may require the Respondent to pay all or part of the deferred penalty.

6. Any notice and procedures, which might otherwise be authorized or required in this action, are waived in the interest of a more timely resolution of the matter.
7. The Executive Director of the TCEQ and the Respondent have agreed on a settlement of the matters alleged in this enforcement action, subject to the approval of the Commission.
8. The Executive Director may, without further notice or hearing, refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings if the Executive Director determines that the Respondent has not complied with one or more of the terms or conditions in this Agreed Order.
9. This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.
10. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable.

## **II. ALLEGATIONS**

As owner and operator of the Facility, the Respondent is alleged to have:

1. Failed to meet minimum well capacity requirement of 1.0 gallon per minute ("gpm") per unit, in violation of 30 TEX. ADMIN. CODE § 290.45(c)(1)(A)(i) and TEX. HEALTH & SAFETY CODE § 341.0315(c), as documented during a record review conducted on March 12, 2008.
2. Failed to provide the public water system's operating records for review, in violation of 30 TEX. ADMIN. CODE § 290.46(f)(2), as documented during a record review conducted on March 12, 2008.
3. Failed to provide a properly constructed intruder-resistant fence in order to protect the system's facilities, in violation of 30 TEX. ADMIN. CODE §§ 290.43(e) and 290.41(c)(3)(O), as documented during a record review conducted on March 12, 2008.

## **III. DENIALS**

The Respondent generally denies each allegation in Section II ("Allegations").





#### IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that the Respondent pay an administrative penalty as set forth in Section I, Paragraph 5 above. The payment of this administrative penalty and the Respondent's compliance with all the terms and conditions set forth in this Agreed Order resolve only the allegations in Section II. The Commission shall not be constrained in any manner from requiring corrective action or penalties for violations which are not raised here. Administrative penalty payments shall be made payable to "TCEQ" and shall be sent with the notation "Re: Deep Water Holdings, Inc., Docket No. 2008-0900-PWS-E" to:

Financial Administration Division, Revenues Section  
Attention: Cashier's Office, MC 214  
Texas Commission on Environmental Quality  
P.O. Box 13088  
Austin, Texas 78711-3088

2. It is further ordered that the Respondent shall undertake the following technical requirements:
  - a. Within 90 days after the effective date of this Agreed Order:
    - i. Obtain and begin maintaining water system records, including but not limited to, tank inspection records, well drillers log, and cementing certificate, in accordance with 30 TEX. ADMIN. CODE § 290.46; and
    - ii. Provide a properly constructed intruder-resistant fence for the well and pressure tank that includes three strands of barbed wire extending outward from the top of the fence at a 45 degree angle, in accordance with 30 TEX. ADMIN. CODE §§ 290.41 and 290.43.
  - b. Within 105 days after the effective date of this Agreed Order, submit written certification as described below in Ordering Provision No. 2.d and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision No. 2.a.
  - c. Within 180 days after the effective date of this Agreed Order, provide a well capacity of 1.0 gpm per unit at the Facility, in accordance with 30 TEX. ADMIN. CODE § 290.45.
  - d. Within 195 days after the effective date of this Agreed Order, submit written certification as described below, and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision No. 2.c. The certification shall be notarized by a State of Texas Notary Public and include the following certification language:

"I certify under penalty of law that I have personally examined and am familiar with the information submitted and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate and complete. I am aware that there are significant penalties for



submitting false information, including the possibility of fine and imprisonment for knowing violations."

The certification shall be submitted to:

Order Compliance Team  
Enforcement Division, MC 149A  
Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin, Texas 78711-3087

with a copy to:

Water Section Manager  
Waco Regional Office  
Texas Commission on Environmental Quality  
6801 Sanger Avenue, Suite 2500  
Waco, Texas 76710-7826


3. The provisions of this Agreed Order shall apply to and be binding upon the Respondent. The Respondent is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Facility operations referenced in this Agreed Order.
4. The Executive Director may grant an extension of any deadline in this Agreed Order or in any plan, report, or other document submitted pursuant to this Agreed Order, upon a written and substantiated showing of good cause. All requests for extensions by the Respondent shall be made in writing to the Executive Director. Extensions are not effective until the Respondent receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
5. This Agreed Order, issued by the Commission, shall not be admissible against the Respondent in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Agreed Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.
6. This agreement may be executed in multiple counterparts, which together shall constitute a single original instrument. Any executed signature page to this Agreement may be transmitted by facsimile transmission to the other parties, which shall constitute an original signature for all purposes.
7. Under 30 TEX. ADMIN. CODE § 70.10(b), the effective date is the date of hand-delivery of the Order to the Respondent, or three days after the date on which the Commission mails notice of the Order to the Respondent, whichever is earlier. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties.



## SIGNATURE PAGE

### TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

  
For the Executive Director

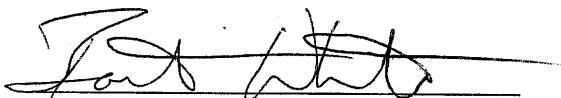
9/10/2008  
Date

I, the undersigned, have read and understand the attached Agreed Order. I am authorized to agree to the attached Agreed Order on behalf of the entity indicated below my signature, and I do agree to the terms and conditions specified therein. I further acknowledge that the TCEQ, in accepting payment for the penalty amount, is materially relying on such representation.

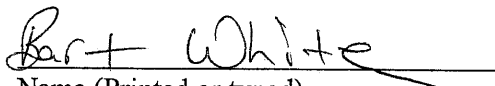
I also understand that failure to comply with the Ordering Provisions, if any, in this order and/or failure to timely pay the penalty amount, may result in:

- A negative impact on compliance history;
- Greater scrutiny of any permit applications submitted;
- Referral of this case to the Attorney General's Office for contempt, injunctive relief, additional penalties, and/or attorney fees, or to a collection agency;
- Increased penalties in any future enforcement actions;
- Automatic referral to the Attorney General's Office of any future enforcement actions; and
- TCEQ seeking other relief as authorized by law.

In addition, any falsification of any compliance documents may result in criminal prosecution.

  
Signature

6-24-08  
Date

  
Name (Printed or typed)  
Authorized Representative of  
Deep Water Holdings, Inc.

Vice President  
Title

**Instructions:** Send the original, signed Agreed Order with penalty payment to the Financial Administration Division, Revenues Section at the address in Section IV, Paragraph 1 of this Agreed Order.

